IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1255 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
JAMNADAS NARBHERAM SAMPAT - Opponent(s)

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Appearance :
MR KC SHAH ADDL PP for Appellant
MR RR TRIVEDI for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date : 15/07/2005

ORAL JUDGMENT

1. Heard Mr. K.C. Shah, learned Addl. P .P. for the appellant State of Gujarat and Mr. R.R. Trivedi, learned counsel for the respondent –

original accused. This court (Coram : Y.B.Bhatt, J.) vide order dated 24.4.2000 granted leave and admitted the appeal.

2.The appellant State of Gujarat has preferred this appeal against the order of acquittal under Section 378 of the Code of Criminal Procedure against the order of acquittal dated 3.7.1999 passed by the learned Judicial Magistrate First Class, Dhoraji in Criminal Case No. 69 of 1994 acquitting the present respondents of the charges under Section 7(1)(5) and 16 of the Prevention of Food Adulteration Act, 1954 (herein after referred to as “the Act” for short).

3. The case of the prosecution was that Shri K.V. Dabhi, Food Inspector, on 26.8.1993 had gone to “Jay Hind Cutlery Store”, main bazar, Jamkandorna at 11-00 O'clock. He collected samples of edible food stuff, which was described as “Signam Fanbal (loose)”. The food sample was purchased in presence of panch witness Balsinh Bachubha on payment of Rs.73=80ps. and he issued necessary notice, then and then, indicating that sample was to be sent to the Public Analyst for analysis, so as to ascertain whether the said edible stuff was in conformity with the rules and standards prescribed under the law. It is stated that

sample food stuff was divided into three equal parts and it was collected in three clean and dried glass bottles and after applying proper seals as prescribed under the law, code number and serial number are given in presence of the panch witness. One part of the sample was sent to the Public Analyst, Bhuj for analysis along with specimen seal under signature as per the memorandum and Form No. 7 on 27.8.1993 through S.T. Parcel. The remaining two parts of the samples were forwarded to the concerned Local Health Authority. The report of the Public Analyst indicated that the sample was not in conformity with the standard laid down under the Rules and therefore, he opined that sample food stuff was adulterated. The Food Inspector, thereafter, prepared detail report and placed it before the Local Health Authority for obtaining his consent under law for lodging prosecution against the present respondent – original accused. The complainant has stated that on receipt of necessary consent from the Local Health Authority, a complaint came to be lodged and thereafter, the Local Health Authority informed the accused about his right to have a sample further tested by the Central Food Laboratory in compliance with requirement of Section 13 of the Act. The relevant

documents have been duly exhibited on the record. After examining the witnesses on the part of the prosecution and recording plea of denial from the accused and after affording an opportunity to the accused, the learned Magistrate has framed two issues namely (i) As to whether the prosecution establishes beyond doubt that Signam Fanbal (Loose) edible food stuff, which was not in conformity with the standards prescribed under the Prevention of Food Adulteration Rules, 1955 (herein after referred to as “the Rules” for short), Rule 5 Appendix – B, Item No. A.25.02.01 and committed offence under Section 7 (1)(5) punishable under Section 16 of the Act? And (ii) What order?. The First issue is answered in negative and the second issue is answered as per order.

4. After discussing the material on record, the learned Magistrate come to the conclusion that the prosecution has failed in proving it's case beyond doubt on the basis of the points mentioned in his judgment and has acquitted the accused of the charges levelled against him under impugned judgment.

5. Shri Shah, learned Addl.P.P. has submitted that the impugned judgment is erroneous and learned Magistrate has failed in appreciating the evidence in its true perspective and

therefore, committed error in recording acquittal of the accused. Shri Shah has also submitted that documents on record and the depositions of witnesses go to show that there was scrupulous compliance with the mandatory provisions of the Act and Rules by the Food Inspector in collecting the samples, wrapping, labeling and sealing the same and in forwarding the same to the Public Analyst for analysis and sending remaining two parts to the Local Health Authority. Shri Shah has further submitted that there is no error or infirmity on the part the public analyst or in obtaining the report of the public analyst and process of according sanction for lodging prosecution on the basis of the report of the public analyst, which clearly indicates that sample in question did not confirm to the standards laid down under the Rules. In view of this, the recording of acquittal deserves to be reversed and as the report of the public analyst is clearly indicating the adulteration by the accused and therefore, the accused shall be dealt with accordingly. Shri Shah has submitted that the finding of the learned Magistrate are not supported by the material on record and therefore, the judgment and order of acquittal deserves to be quashed and set aside. Shri Shah

has also submitted that the learned Magistrate ought not to have held that there was non-compliance with the provisions of Rule 12 of the Rules in issuing Form No. 6 as held by the learned Magistrate. Shri Shah has also submitted that learned Judge has erroneously held that notice issued under Rule 12 by the Food Inspector indicating his intention to send the samples for analysis was suffering from any vice. Shri Shah has also submitted that merely omission in mentioning the Serial Number and Code Number etc. in the notice under Rule 12 cannot be treated as violation of mandatory provisions in absence of any serious prejudice to the accused. Shri Shah has submitted that amendment in the proforma of Form No. 6 cannot have any effect of adding or amending the provision of parent Act and Rules as well. Reading of Section 11 with Rule 12 of the Act and Rules would show that the omission in writing the serial & code number is not envisaged as a mandatory requirement and as its not expressly provided either in the Act or Rules, the amendment in the form cannot have a serious adverse effect on case of the prosecution. Shri Shah has also submitted that learned Magistrate has erred in recording finding and taking a view that there was a

violation of Rule 14 of the Rules. Shri Shah has submitted that complainant in his deposition has stated in terms that the glass, bottles or jar, which were used for collecting the sample food stuff were shown to be cleaned to the accused as well as panch witness, no further positive evidence was required in this behalf. The decision relied upon by the trial Court in support of the finding that there was a violation of Rule 14 of the Rules were of no help to the accused looking to the facts as it has come out in record. Shri Shah has also submitted that learned Judge has erroneously held that there was violation of mandatory provision of Rule 18 of the Rules also. Shri Shah has also submitted that on close perusal of the deposition of the complainant and the memo of complaint and report of the Public Analyst, it clearly show that there was a complete compliance with the mandatory provisions of Rule 18 of the Rules. The omission of the wordings “sealed packet” in the report of the public analyst or in forwarding letter issued by the Food Inspector, ipso facto would not go to show that memo and specimen seal were not placed in a sealed packet. It is stated by Food Inspector in his deposition in complaint and public analyst in his report that

seals were intact and the specimen of seal was received in accordance with law. Shri Shah has also submitted that it is important to note that the learned Magistrate ought not to have gone beyond the deposition and evidence on record in recording finding and drawing his conclusion. Shri Shah has submitted that in cross-examination of the prosecution witness – complainant, only one suggestion was made that no standard was prescribed either under the Act or Rules for sample in question namely Signam Fanbal (loose). Shri Shah has further submitted that in absence of any other suggestion and/or question in cross-examination of the witness, the deposition of the complainant should be treated as having remained uncontroverted and therefore, learned Magistrate ought not to have drawn the conclusion about the so called infirmity in the process of collecting the samples, sending it for analysis. Shri Shah has also submitted that in view of this, order and judgment of acquittal recorded by learned Magistrate deserves to be quashed and set aside and as the report of the public analyst indicates adulteration, the accused deserves to be convicted and sentenced.

6.Shri R.R.Trivedi, learned counsel appearing on behalf of the respondent accused has vehemently

supported the finding and conclusion of the learned Magistrate acquitting the original accused. Shri Trivedi has invited the court's attention to the document at page No. 35 of the paper book – a copy of the notice purporting to have been issued under the provisions of Rule 12 of the Rules and in proforma Form No. 6 intimating the vendor that the sample food stuff was to be sent for analysis to the Public Analyst appointed by the State of Gujarat. Shri Trivedi has submitted that serious infirmity is committed in issuing this notice and therefore, there is violation of provisions of Rule 12 of the Rules, in as much as, the complainant Food Inspector has not used the prescribed form, in existence of Local Health Authority and has omitted to mention the Code Number and Serial Number of Local Health Authority. Shri Trivedi has submitted that the learned Magistrate has rightly held that notice at Ex.15 cannot be said to have been issued in strict compliance with Rule 12 of the Rules. Learned Magistrate has in fact discussed at length in his judgment. That proforma in this Rule, under Rule 12, which is to be issued in form No. 6 was in fact amended vide Notification dated 16th May, 1988 and the amendment was to the effect that Food Inspector while issuing notice was to

mention, after the details of the food, the Code Number and Serial Number of the Local Health Authority. This amendment in the Form No. 6 of the notice issued under Rule 12 was made, with a view to provide additional safe guard to the vendor and to work as restriction / check on the Food Inspector. Thus, omission in mentioning the code number and serial number in the notice at Ex.15, has resulted into serious prejudice to the accused and therefore, the learned Magistrate has rightly held that there was a violation of Rule 12 in issuance of the defective notice. Shri Trivedi has further invited the attention of this Court to the fact that prosecution is required to lead positive evidence and established that Jar, bottles and container used for collecting sample food stuff were cleaned right from the spot and the person, who has cleaned, is also required to be examined. In the instant case, close perusal of the deposition of the complainant as well as the panchnama, would show that the prosecution has failed in proving beyond doubt that jar, glass, bottles and container and weight scale were not cleaned before the sample in question was collected. The absence of any positive evidence to this effect would go to show that the prosecution has failed to prove beyond

doubt the compliance with the mandatory provisions of Rule 14 of the Rules. Shri Trivedi, has invited attention of this court to the forwarding letter issued by the Food Inspector, when he dispatched the sample to the public analyst. Shri Trivedi has submitted that memorandum in Form No. 7 at Ex.18, does not conclusively show that memorandum was sent in a sealed cover nor the receipt issued by the public analyst disclosed that he received the memorandum with specific seal impression “in sealed packet”. Shri Trivedi has drawn attention of this court to the provision of Rule 18 and submitted that it is mandatory requirement under the said Rules that memorandum and specimen impression of the seal used to seal the packet, shall be sent separately to the public analyst in a “sealed packet”. In absence of any reference to “sealed packet” either in the forwarding letter issued by the Food Inspector or in the receipt issued by the Public Analyst, only one conclusion was possible that the same was not sent in a sealed packet and therefore, the prosecution has failed in establishing due compliance with mandatory provision of law of Rule 18 of the Rules. Shri Trivedi has submitted that prosecution has failed in establishing that

sample food articles namely “Signam Fanbal (loose) was not in conformity with the standard prescribed and therefore, it was adulterated. Shri Trivedi has submitted that it was pointedly suggested to the prosecution witness – complainant in cross-examination that no standards have been laid down either in the Rules or in the Act for food item called as “Signam Fanbal (loose)”. The Food Inspector did not deny the suggest and therefore, it become clear that Food Article cannot be treated to be in conformity with the standard laid down. Inability on the part of Food Inspector in pointing out any standard prescribed for this particular food article, namely “Signam Fanbal (loose), would deal a blow to the root of the case of the prosecution and therefore, the entire prosecution should fail.

7. At this stage, Shri Shah, learned Addl.P.P. with the permission of the court has submitted that this submission of Shri Trivedi is not tenable in view of the fact that sample food article may be called in a common parlance by any name but the fact remains that the sample food article in question was in fact chewing gum and the parameters and standards for chewing gum have been laid down in Appendix B to the Rules at Item No.A.25.02.01 and

accordingly, the public analyst has also treated the same sample to be chewing gum and given his clear opinion that the food article in question did not conform to the parameters and standard laid down under the same item at Appendix – B.

8. This court is conscious that the present appeal being an acquittal appeal filed under Section 378 of the Code of Criminal Procedure, 1973 and courts are very slow in disturbing the finding of facts and conclusion of acquittal recorded by the learned trial Judge, which had an advantage of actually accessing the demeanour of the witnesses deposing before it. This court has perused the entire record of the matter and heard the counsel of the respective parties.

9. The entire record refers sample food article as “Signam Fanbal (loose)”. It is an admitted fact that except in the report of the Food Analyst at one place, no other authority or agency like Food Inspector, Public Health Authority and either witnesses have referred the article to be chewing gum. The Food Inspector has consistently referred in all his correspondence the subject sample to be “Signam Fanbal”. The narration in the notice under Section 11 of the Act and Rule 12 of the Rules

and in the forwarding letter issued by the Food Inspector to the Public Analyst and in the receipt of the public analyst and in the consent issued by the Local Health Authority, the word “chewing gum” is conspicuously absent. The narration of the sample food article does not give clear picture as to what was the stuff made of. The notice in Form No. 6 written and issued by the Food Inspector, has stated that quantity of 900 gms/ml. Ltr., which would show that the very Food Inspector while collecting the sample did not know about the food stuff and sent the sample for analysis. He had to inquire with the vendor and the name suggested by vendor namely Signam Fanbal (loose) has thereafter, proceeded further by mentioning the same in all the correspondence except one place where the Public Analyst has set out the parameters of article with Item No. A.25.02.01 of the Appendix B of the Rules. The defence therefore, seems to have heavily relied upon the fact that when in absence of any standard or parameter in respect of the food sample namely 'Signam Fanbal (loose), the entire case of the prosecution should fail. On this basis, the defence has suggested pointedly in the cross-examination of the prosecution witness – complainant that there

was no parameter or standard prescribed for item “Signam Fanbal” either in the Act or in the Rules.

10. The Public Analyst has also mentioned the sample of food article by the name “Signam Fanbal (loose)” and he has failed in clarifying that though food article is referred to as “Signam Fanbal” and in fact, the same is nothing but chewing gum only. There ought to have been specific clarification on the part of the public analyst that food article was capable of being classified as chewing gum only. This was all the more necessary in view of the fact that nomenclature employed i.e. “Signam Fanbal (loose)” is constantly used by all the authorities and at the same time, it is not commonly used or known to all. A submission was made that there was possibility that though food stuff was chewing gum only, but it was referred to as “Signam Fanbal (loose)” in colloquial parlance and therefore, the standard of chewing gum laid down in Appendix B of the Rules were rightly made applicable. The submission that sample food article is not one of the food articles in respect whereof parameters are prescribed, though, seems to be attractive, it deserves to be rejected on the ground that subject food article in the sample

was having all ingredients of food item called chewing gum and accordingly, the parameter of chewing gum were applicable and as per the standard laid down for the food article, it was held to be adulterated by the public analyst in his report dated 4.10.1993...

11. The next submission that due to non-compliance of the important provisions of the Rules namely Rules 12, 14 and 18 of the Rules, the prosecution's case deserves to be discarded and acquittal deserves to be upheld. As it is stated herein above, the fact remains that notice in Form No. 6 issued by the Food Inspector complainant, did not contain the Code Number and Serial Number of the Local Health Authority and therefore, it was not in conformity with Form No. 6 prescribed under the Rules. The omission in mentioning the Code Number and Serial Number cannot be brushed aside by saying that it does not create any prejudice against the accused. In fact, the legislature and the rule makers, in their wisdom, thought it essential to make a mention of Code Number and Serial Number of the Local Health Authority, so as to provide an added safeguard against the possible misuse and/or error resulting into fastening of criminal liability upon the person or vendor. The

requirement of mentioning Code Number and Serial Number of Public Health Authority has in fact have been brought in, by way of amendment in the year 1988. Before 1988, it was not required to be mentioned in the Form 6th notice. The requirement is an essential and important one and therefore, it was specifically brought on the statute book by way of amendment. Form No. 6, which is a part of the Rules, as Rule 12 in unequivocal terms states that Food Inspector has to issue notice right at the place of the vendor in prescribed form No. 6 and therefore, it can be said that the prosecution has failed in establishing due compliance with provisions of Rule 12 of the Rules Section 11(1)(a) read with Rule 12 of the Rules. Be that as it may, the fact remains that notice under Rule 12 is defective, as it does not issued in the prescribed form.

12. The complainant has stated in his deposition that he used three clean colour less, dried, transparent bottles for collecting the food article. However, he has not pointed out as to whether the bottles were cleaned by himself or he had got that bottles cleaned with the help of peon or whether the food articles, which were collected in bottles, the bottles were received by him from the office. Thus, it can

be said that prosecution has not led positive evidence to establish absolute and total compliance of mandatory provision of Rule 14 of the Rules. This court time and again has held in many cases that a duty is cast upon the prosecution to prove that before collecting the samples, the bottles were cleaned.

13. The trial court has also referred some of those judgments in the order. This court in case of **State of Gujarat Vs. Babu Lavji Jalia,** reported in 1995 (2) GLH p.722 has observed that the Rule 14 of the Prevention of Food Adulteration Rules, 1955 is mandatory and it is the duty of the prosecution to prove by leading positive evidence that bottles were cleaned and dried before the sample was taken by the Food Inspector. It is therefore, the duty of the prosecution to prove beyond reasonable doubt that all ingredients or provisions that are to be proved as per law and especially provisions which are mandatory in nature have got to be proved beyond reasonable doubt. In the instant case bearing the statement that dry and clean bottles were used, which of course has remained uncontroverted, would alone be not sufficient to establish absolute compliance of Rule 14 of the Rules. In fact, the panch witness has not supported the version of the complainant. The

prosecution has not chosen to examine any one else. This court in case of **STATE OF GUJARAT v. BHUPENDRA M. MEHTA**, reported in 1999 (2) FAC 201, where the identical situation had arisen and the Court has upheld the acquittal. In the instant case also, it can well be said that in absence of any further positive evidence, in respect of due compliance with Rule 14 of the Rules, it can well be said that prosecution has not established beyond reasonable doubt the due compliance with Rule 14 of the Rules and therefore, the acquittal does not deserves to be disturbed in this appeal.

14. This court is unable to agree with the submission that due to absence of mentioning of “sealed packet” in Public Analyst report, the inference may to be drawn that specimen seal was not sent in a sealed packet. However, suffice it to say that as the court is not inclined to disturbed the finding of facts in respect of non compliance of Rule 14, that itself is sufficient to dispose of this appeal by upholding the ultimate order of acquittal of the original accused.

15. In the result, though the court is not in complete agreement with the reasoning and finding of the learned Magistrate on all points, is not inclined to disturbed finding

and recording of acquittal only on the point that prosecution failure in establishing beyond doubt due compliance with Rule 14 of the Rules and therefore, the appeal fails and is hereby dismissed. The order of acquittal dated 3.7.1999 passed by the learned Judicial Magistrate First Class, Dhoraji in Criminal Case No. 69 of 1994 is hereby confirmed.

Date:15.7.2005. **(S.R.BRAHMBHATT, J.)**

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